

FELIX LIMON, PLAINTIFF-APPELLANT, VS. (MRS.) ALEJO CANDIDO, PETRONILA CANDIDO, AND THE HEIRS OF ALEJO CANDIDO, DEFENDANTS-APPELLEES.*G.R. No. L-22418. April 28, 1969*

Ponente: MAKALINTAL, J.

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On July 5, 1963, the day set for the initial hearing of Civil Case No. Q-6951* of the Court of First Instance of Rizal (Branch V, Quezon City), only the counsel for the plaintiff appeared. And because his client (herein plain-tiff-appellant) was not in court that day, counsel manifested before the lower court that he was not ready to go to trial. In view of plaintiff's absence, counsel for the defendants moved for the dismissal of the case. The lower court, viewing plaintiff's non-appearance as indicative of lack of interest since "(T)here is actually no reason for plaintiff to be absent from the courtroom now inasmuch as this case is set for today and as early as May 23, 1963 counsel for the plaintiff was notified thereof," found defendants' motion to dismiss well-taken.

Plaintiff asked for the reconsideration of the order of dismissal on the main ground that his failure to appear on the day of the trial was due to sickness as evidenced by a medical certificate attesting to such fact. Furthermore, he asserted that he had a good cause of action as shown by the fact that he was sustained by the inferior court in his claim. Besides, plaintiff argued that since the trial set for July 5, 1963 was the initial hearing, the postponement sought by his counsel was neither unreasonable nor remotely suggestive of lack of interest. On July 20, 1963 the lower court denied reconsideration. On July 24, 1963 plaintiff again moved to set aside the order denying his motion for reconsideration, reiterating the grounds he alleged in his motion for reconsideration. This was again denied on August 28, 1963. Hence this appeal.

The sole issue in this case is whether or not the lower court gravely abused its discretion in denying counsel for the plaintiff's motion for continuance of the initial hearing, thus dismissing the case, and in denying later the subsequent motions for reconsideration filed by plaintiff.

Under the circumstances of this case, we cannot agree with the conclusion reached by the lower court that the absence of plaintiff at the initial hearing of the case - though his counsel was there - was a positive "manifestation of lack of interest." If there was anyone who would want an early termination of this case, that would be the plaintiff; he would naturally be the last person to delay this case not only because he had already won in the inferior court but more so because defendants had been in possession of the premises in question up to this time.** The assumption therefore that plaintiff had lost interest in the case just because of his non-appearance at the initial hearing thereof does not appear to be indubitable nor logical. Besides, the explanation later submitted by plaintiff as to why he was unable to attend does not appear to be unreasonable or so far from the truth that it should not be considered sufficient to excuse plain-tiff's non-appearance.

It is true that the allowance or denial of motions for postponement and the setting aside of orders previously issued rest principally upon the sound discretion of the court to which the same are addressed; but such discretion

should always be predicated on the consideration that more than the mere convenience of the courts or of the parties in the case the ends of justice and fairness would be served thereby. When no substantial rights are affected and the intention to delay is not manifest, the corresponding motion to transfer the hearing having been filed accordingly, it is sound judicial discretion to allow the same (*Panganiban vs. Vda. de Sta. Maria*, L-25529, February 29, 1968). And if such motion is denied because the reason therefor does not appear indubitable, a subsequent plea for reconsideration on a valid ground such as that invoked in this case, namely, sickness of the party duly attested by a physician, should not be lightly ignored. At this point it is pertinent to quote what this Court noted in the case of *Macasa, et al. vs. Herrera*, (101 Phil. 44, 48);

"Inconsiderate dismissals, even if without prejudice, do not constitute a panacea nor a solution to the congestion of court dockets; while they lend a deceptive aura of efficiency to records of individual judges, they merely postpone the ultimate reckoning between the parties. In the absence of clear lack of merit or intention to delay, justice is better served by a brief continuance, trial on the merits, and final disposition of the cases before the court."

In view of the foregoing, the order of dismissal is hereby set aside and this case is remanded to the lower court for further proceedings. No pronouncement as to costs.

Reyes, J.B.L., Acting C.J., Dizon, Zaldivar, Sanchez, Fernando, Teehankee, and Barredo, JJ., concur.
Concepcion, C.J., and Castro, J., on official leave.
Capistrano, J., did not take part.

* Civil Case No. Q-6951 is actually an appeal taken by the defendants from the decision of the City Court of Caloocan in an ejectment case (Case No. 4366) adverse to them.

** Plaintiff had earlier moved for the execution of the judgment of the inferior court pending appeal but the court a quo denied the same on June 5, 1963.

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